

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO
CLASS 1 J&J

Master Civil No. 01-cv-12257

MDL No. 1456

Judge Patti B. Saris

**CLASS COUNSEL'S PARTIAL OPPOSITION TO
DON HAVILAND'S MOTION FOR CONTINUANCE
OF SANCTIONS HEARING SCHEDULED FOR JUNE 21, 2010**

Class Counsel respectfully submit this partial opposition to Don Haviland's Motion For Continuance of Sanctions Hearing Scheduled for June 21, 2010 ("Motion to Continue"). While Class Counsel do not oppose a short extension in order to accommodate Mr. Haviland's schedule, they believe that an indefinite extension until sometime after August 2010 is inappropriate. Class Counsel likewise oppose the evidentiary hearing contemplated by Mr. Haviland's Motion.

Partial Opposition

Even though the order in the Pennsylvania AWP case that allegedly necessitates his request for a continuance was entered on May 20th (*see* Ex. A to Motion to Continue), Mr. Haviland filed his Motion to Continue less than a week before the hearing on Class Counsel's Motion for Sanctions is scheduled to be heard.¹ He also failed to confer with either Class

¹ On the same day Mr. Haviland filed his motion to voluntarily dismiss the claims of the Class 1 representatives against J&J. Pursuant to Case Management Order No. 33, that motion was due June 1. Thus, not only did Mr. Haviland file his motion to voluntarily dismiss over two weeks late, but he also failed to respond to written inquiries from counsel for the J&J Defendants asking him whether Mr. Haviland did, in fact, continue to intend to withdraw those clients.

Counsel or counsel for the J&J Defendants regarding his request. Had Mr. Haviland done so, Class Counsel would not have had to file this Partial Opposition.

Class Counsel do not oppose a short postponement in order to accommodate Mr. Haviland's schedule; however, they do oppose the potentially indefinite extension Mr. Haviland requests. The Motion to Continue seeks an extension sometime *after* the August 9, 2010 trial date in the Pennsylvania AWP action. *See* Motion to Continue, ¶ 11. Class Counsel believe that a two-week extension should get Mr. Haviland beyond the depositions described in his Motion and the close of discovery in the Pennsylvania AWP case, while still ensuring that Class Counsel's Motion is heard on a timely basis. Class Counsel have conferred with counsel for the J&J Defendants, who likewise are involved in the Pennsylvania AWP case and therefore face the same scheduling difficulties Mr. Haviland does. Although counsel for the J&J Defendants made arrangements to attend the June 21st hearing, and stand ready to do so, they do not oppose a short extension.

Finally, Class Counsel oppose the evidentiary hearing contemplated by Mr. Haviland's Motion to Continue. Mr. Haviland claims that he requires an extension because he plans a "presentation of evidence" at the hearing on Class Counsel's Motion for Sanctions. *Id.* at ¶ 11. Specifically, he states that he intends to call Steve Berman, Tom Sobol and Jennifer Connolly, Class Counsel, as witnesses at that hearing. *Id.* He further threatens that "[i]f the instant request for continuance is not granted, Notices for the attendance of witnesses will be issued." *Id.* This Court has never authorized an evidentiary hearing regarding Plaintiffs' Motion – nor has Mr. Haviland ever requested one.² Indeed, the hearing on Class Counsel's Motion is currently scheduled for 4:00 p.m. – suggesting that this Court never countenanced an evidentiary hearing.

² Instead, Mr. Haviland has merely made references to his intention to call witnesses. However, that is not proper vehicle for requesting an evidentiary hearing from the Court.

Moreover, this Court has never authorized Mr. Haviland to request that witnesses appear at the hearing on Class Counsel's Motion – and it certainly has never authorized Mr. Haviland to use Class Counsel's Motion as a pretense to examine Class Counsel.³

WHEREFORE Class Counsel respectfully request that this Court postpone the hearing on their Motion for Sanctions Against Don Haviland by two weeks, or some other sufficiently abbreviated period of time that is convenient for the Court.

DATED: June 16, 2010

Respectfully submitted,

By: /s/ Steve W. Berman

Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman Sobol Shapiro LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

Liaison Counsel

Steve W. Berman
Sean R. Matt
Hagens Berman Sobol Shapiro LLP
1918 8th Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

³ This is not the first time that Mr. Haviland has sought discovery from Class Counsel. In connection with his objections to the Track 2 settlement Mr. Haviland attempted to subpoena documents from Prescription Access Litigation (“PAL”), Community Catalyst and Health Care for All (“HCFA”) related to their relationship with Class Counsel in support of Mr. Haviland’s conspiracy theory that Class Counsel had filed these cases in order to secure *cy pres* funds for those organizations. And in the *Lupron* litigation, Mr. Haviland sought to take Mr. Sobol’s deposition under a similar pretense. *See In re Lupron Mktg & Sales Practices Litig.*, 2005 U.S. Dist. LEXIS 4039 (D. Mass. Mar. 16, 2005) (Stearns, J.). Mr. Haviland has likewise sought, but has been denied, discovery from other attorneys in other cases. *See* Dkt. No. 5983 at 11-13 (describing same).

Jennifer Fountain Connolly
Hagens Berman Sobol Shapiro LLP
1629 K St. NW, Suite 300
Washington, D.C. 20006
Telephone: (202) 355-6435
Facsimile: (202) 355-6455

Kenneth A. Wexler
Wexler Wallace LLP
55 W. Monroe Street, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Jeffrey L. Kodroff
John A. Macoretta
Spector, Roseman, Kodroff & Willis P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Marc H. Edelson
Edelson & Associates, LLC
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

Co-Lead Class Counsel

CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

In re Pharmaceutical Industry Average Wholesale Price Litigation
Master Case No. 01-cv-12257, MDL 1456

I, Steve W. Berman, hereby certify that I am one of the attorneys for the Class and that, on June 16, 2010 I caused a copy of **CLASS COUNSEL'S PARTIAL OPPOSITION TO DON HAVILAND'S MOTION FOR CONTINUANCE OF SANCTIONS HEARING SCHEDULED FOR JUNE 21, 2010** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman

Steve W. Berman
Hagens Berman Sobol Shapiro LLP
1918 8th Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594